



June 26, 2001

Mr. J. Robert Giddings  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2981

OR2001-2733

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148832.

The University of Texas Southwestern Medical Center, the University of Texas Health Science Center at Houston, and the University of Texas Medical Branch at Galveston (the "university") received requests for financial interest disclosure forms filed by certain faculty members.<sup>1</sup> You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code. An attorney for the requestor has likewise submitted comments to this office in support of releasing the information. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.<sup>2</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You first contend that the requested financial interest disclosure forms are confidential under federal regulations. You indicate that the requested financial interest disclosure forms are generated pursuant to title 42, sections 50.601 through 50.607 of the Code of Federal Regulations as well as title 45,

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<sup>1</sup>Each branch received a separate request for information. However, because each branch is affiliated with the University of Texas System and because the requested information is the same type of information in each case, we will consider the three requests in this single ruling.

<sup>2</sup>We note that you have submitted a representative sample of information with respect to the request for information relating to the University of Texas Southwestern Medical Center. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

sections 94.1 through 94.6 of the Code of Federal Regulations. The Code of Federal Regulations provides that, "[t]o the extent permitted by law, [the federal Department of Health and Human Services] will maintain the confidentiality of all records of financial interests." 42 C.F.R. § 50.606(b); 45 C.F.R. § 94.6(b). We do not believe that this constitutes a confidentiality provision for the purpose of section 552.101 of the Government Code. See Open Records Decision Nos. 658 at 4 (1998) ("A statutory confidentiality provision must be express ..."), 478 at 2 (1987), 465 at 4-5 (1987).

You next contend that the information is confidential under common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information generally meets the first prong of the privacy test. See Open Records Decision Nos. 600 (1992), 545 (1990). Thus, the question is whether there is a legitimate public concern in the requested financial disclosure forms. We believe the public has an interest in knowing whether researchers working on publicly funded projects have a conflict of interest that could, in some way, lead to the abuse of their position. See *Washington Post Co. v. United States Dep't of Health and Human Servs.*, 690 F.2d 252, 264-65 (D.C. Cir. 1982). The forms at issue are created pursuant to a federal regulatory scheme to ensure that work performed under Public Health Service contracts, grants, and cooperative agreements will not "be biased by any conflicting financial interest of an Investigator." 42 C.F.R. § 50.601; 45 C.F.R. § 94.1. This regulatory scheme is evidence of the public interest in the financial information at issue. Based on our review of the information at issue, we find that the public has a significant interest in the disclosure of the information. See *Washington Post*, 690 F.2d at 264-65; 42 C.F.R. § 50.601; 45 C.F.R. § 94.1; Attorney General Opinion H-1070 at 1-2 (1977); Attorney General Opinion H-15 at 5-7 (1973). Therefore, the requested information is not protected under common law privacy. See *Indus. Found.*, 540 S.W.2d at 685.

We note, however, that some of the requested information may be excepted from disclosure under section 552.117. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made: See Open Records Decision No. 530 at 5 (1989). Therefore, the university may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the university must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The university may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We have marked the types of information that can be protected under section 552.117 if the proper request has been made.

In summary, the university must withhold any home address, home telephone, social security number, or family member information contained in the requested financial disclosure forms if the relevant employee elected to keep this information confidential before the university received the request for their information. The university must release the remainder of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

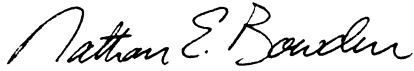
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 148832

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